

## **TENTATIVE RULINGS**

**FOR: October 20, 2016**

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

**Unlawful Detainer Cases** – No tentative ruling will be posted because access to records is not permitted until 60 days after the complaint is filed. Parties **must appear** for all unlawful detainer demurrers, motions to quash, and other matters. After 60 days, tentative rulings will be posted in accordance with the local rules.

**Court Reporting Services** – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

### **PROBATE CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse)**

**Estate of Gregory Walter Gale**

**16PR000150**

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND  
AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION  
OF ESTATES ACT

**TENTATIVE RULING:** GRANT petition.

### **CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse)**

**In the Matter of the Bob and Lois Barberis 2003 Trust**

**26-66678**

(1) APPLICATION TO ENFORCE THE STIPULATED ORDER OF SETTLEMENT, FOR  
ORDER TO SHOW CAUSE RE: CONTEMPT, AND REQUEST FOR ATTORNEY'S FEES  
AND COSTS

(2) APPLICATION FOR APPOINTMENT OF RECEIVER

**TENTATIVE RULING:**

**A. Requests for Joinder**

Trustee Misti Harrell's (õtrusteeö) request for joinder to the application to enforce the stipulated order of settlement is GRANTED.

Petitioners/beneficiaries Misti Harrell, Patricia Barberis, and Deborah Barberis (collectively õpetitionersö) request for joinder to the application for appointment of receiver is GRANTED.

## **B. Application to Enforce the Stipulated Order of Settlement**

### **1. Respondent Violated the Stipulated Order of Settlement**

Petitioners' application to enforce the August 19, 2016 Stipulation and Order pursuant to Code of Civil Procedure section 664.6 is GRANTED. The agreement required that the property at 3033 Myrtledale Road in Calistoga be listed for sale by August 24, 2016. (Manwell Decl., Ex. A at p. 4, § 4(i).) In addition, the agreement required beneficiary/respondent Robert Barberis, Jr. (õrespondentö) to fully cooperate in the listing and sales process by keeping the home and the grounds in õshow condition,ö and doing whatever a reasonable seller, motivated by good faith to sell, would do to enhance the sales process. (*Id.*, Ex. A at p. 6, § 4(v).)

The Court agrees with petitioners that respondent has violated the õtime is of the essenceö clause requiring the immediate listing of the property as well as the õreasonable sellerö clause. (*Id.*, ¶ 11.) First, respondent has undermined the relationship with the agreed upon real estate agent, which has delayed listing the property for sale. (Robert Barberis, Jr. Decl., ¶¶ 20, 22, 30, 32-36.) Second, respondent acknowledges he failed to fulfill the real estate agent's various requests to prepare the property for sale and staging/photographs. (Robert Barberis, Jr. Decl., ¶ 16; Kristen Barberis Decl., ¶ 20.) A reasonable seller would have fully complied with these requests in order to increase the appeal of the property to buyers. Third, it is disingenuous for respondent to invoke a purported right of first refusal after agreeing to the August 19, 2016 Stipulation and Order. The agreement specifically states that if the preferred method of distribution occurs: õUpon full payment to Robert of the sums [based on the closing of the sale of Myrtledale] . . . Robert's TIC will be deemed terminated and fully performed.ö (Manwell Decl., Ex. A, § 5(ii)(c).) Respondent's actions lead the Court to suspect he is purposefully dragging his feet and manufacturing disputes to undermine the preferred method of distribution in order to lower the value of the property to allow him to purchase it at a discounted price. Threatening to invoke the no-contest clause against petitioners only reinforces the Court's suspicion.<sup>1</sup>

### **2. Contempt**

Petitioners' application for an order to show cause re: contempt against respondent shall remain on calendar for October 27, 2016. Respondent will be arraigned on the contempt allegations at that time.

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<sup>1</sup> The Court has not entertained Kristen Barberis' claim of a life estate in the property as she is not a party to this action. The Court, however, finds the timing of this latest development suspect when considered in conjunction with respondent's actions. The Court suspects this latest development may be part of respondent's plan to make the property unmarketable to facilitate his purchase of the home at a steep discount.

### **3. Request for Attorney's Fees**

Petitioners request for attorney's fees and costs against respondent for bringing their application to enforce the stipulated order of settlement is GRANTED IN PART in the amount of \$4,077.50, payable to petitioners counsel within 20 calendar days of service of notice of entry of order. This amount represents Manwell's 4.8 hours of work at \$350 per hour, Beletsis's 8.5 hours of work at \$275 per hour, and the \$60 filing fee. (Manwell Decl., ¶ 20; Beletsis Decl., ¶ 4.) The Court does not award for anticipated time or for meet and confer efforts.

### **C. Application for Appointment of Receiver**

Trustee's application for appointment of Sara Henry as receiver to enforce the August 19, 2016 Stipulation and Order and to sell the property at 3033 Myrtledale Road in Calistoga as to the 5% owned by respondent is GRANTED. The Court finds that a receiver is necessary based on respondent's actions noted above. The receiver would not have been necessary if not for respondent's failure to comply with the August 19, 2016 Stipulation and Order. No bond is required. Respondent shall pay the costs and expenses of the receivership.

## **PROBATE CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.-1111 Third St.)**

**In the Matter of Juan Manuel Segura**

**16PR000159**

PETITION FOR ORDER AUTHORIZING COMPROMISE OF MINOR'S CLAIM

**APPEARANCE REQUIRED**

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**Estate of Vicente M. Diaz**

**16PR000162**

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND  
AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION  
OF ESTATES ACT

**TENTATIVE RULING: GRANT** Petition.

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**Estate of Aurora C. Diaz**

**16PR000163**

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND  
AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION  
OF ESTATES ACT

**TENTATIVE RULING: GRANT** Petition.

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**In the Matter of Jennifer Hernandez**

**16PR000171**

PETITION FOR ORDER AUTHORIZING COMPROMISE OF MINOR'S CLAIM

**APPEARANCE REQUIRED**

**CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.-1111 Third St.)**

**Leyda Heisch v. Queen of the Valley Medical Center, et al.**

**16CV000339**

1) MOTION TO STRIKE THE FIFTH CAUSE OF ACTION IN PLAINTIFF LEYDA HEISCH'S FIRST AMENDED COMPLAINT PURSUANT TO CAL. CODE CIV. PROC. § 425.16

2) DEFENDANTS' DEMURRERS TO FIFTH CAUSE OF ACTION IN PLAINTIFF'S FIRST AMENDED COMPLAINT

**APPEARANCE REQUIRED.** In accordance with the rules of judicial conduct, Judge Rodney G. Stone discloses that he was on the Queen of the Valley Medical Center Foundation Board of Directors for 12 years, with his term ending in 2006. At the end of his term, he was named an honorary member of the QVMC Foundation Board of Directors, but is no longer active on the Board. Further, Judge Stone is acquainted with Walt Mickens, CEO of QVMC, as they are both members of the Napa Valley Country Club. Nevertheless, Judge Stone believes he can be fair and impartial in this matter.

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**Joanne M. Birtcher v. Wayne T. O'Connell, et al.**

**16CV000585**

DEMURRER TO THE COMPLAINT

**TENTATIVE RULING:**

Defendants Wayne T. O'Connell, Gabrielle L. O'Connell, and Vintners Choice Cellars, LLC brought their demurrer under Code of Civil Procedure sections 435-37. These provisions deal with a motion to strike. Defendants' papers make clear that they are demurring to the first cause of action in the complaint on the ground of failure to state sufficient facts. The Court, therefore, construes defendants' demurrer as being made under Code of Civil Procedure section 430.10, subdivision (e).

As plaintiff Joanne Birtcher, trustee of the Joanne M. Birtcher Separate Property Trust Established December 20, 1991, proffers, the parties have stated convergent views of the parties' easement rights. That is sufficient to demonstrate an actual controversy requiring

declaratory relief. (Opp. at pp. 5:26-6:1; Compl., ¶¶ 23, 25; Code Civ. Proc., § 1060; see *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80 [fundamental requirement of a request for declaratory relief is the existence of an actual present controversy between the parties].) The matter is ripe for judicial review. Thus, defendants' demurrer to the first cause of action for declaratory relief on the ground of failure to state sufficient facts is **OVERRULED**. Defendants shall answer the complaint within 10 calendar days of notice of entry of order.